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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/036,736

Filing Date: December 21, 2001

Appellant(s): CHEN ET AL.

Alan R. Marshall
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/13/08 appealing from the Office action
mailed 9/25/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5, 7, 67- 71, 73, 75-77, 79-85, 92-97, 114-117, 120, 121, 127, 129-134, 136, and 137 are rejected under 35 U.S.C. 102(b) as being anticipated Chen et al.

USPN 5990377.

As to claim 1, 67, 114, 120, 121, and 127, 129-132, see Abstract; col. 1, lines 20-32; col. 2, line 59 through col. 3, line 6; col. 7, lines 39-59; col. 8, lines 46-61; col. 36, line 64 through col. 37, line 16; Figures 1-3. As to the abrasive material attached to the outer cover, Chen discloses the adhesive containing regions are noticeably stiffer than the surrounding base sheet (col. 45, lines 59-60). Chen teaches the adhesive on the base sheet is applied in the form of a spray, swirl, dissolved adhesive, or droplets (col. 5, lines 49-57). The examiner, at least, interprets the droplets, as adhesive filler particles as broadly as claimed. In this instance the adhesive, which is attached to the outer cover, is abrasive relative to the surrounding base sheet. As to the item being used to clean a surface, this limitation is directed to an intended use of the article. Intended use must result in a structural difference between the claimed invention and the prior art in

order to patentably distinguish the claimed invention from the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). If the prior art structure is capable of performing the intended use, then it meets the claim limitations.

As to claims 3 and 69, see col. 9, lines 49-57.

As to claims 4 and 70, see Figure 1 and col. 3, lines 37-45.

As to claims 5 and 71, see col. 5, lines 5-15.

As to claims 7 and 73, see Figure 14.

As to claim 75, see col. 5, lines 44-48.

As to claim 76, see col. 29, lines 8-26.

As to claim 77 and 117, see col. 12, lines 24-29.

As to claim 79-81, 92, 93, 115, and 116 see Figure 1 and col. 3, line 45 through col. 4, line 48.

As to claims 82, 95, 96, and 97 see col. 4, lines 13-18 and col. 33-col. 34.

As to claim 83, see Figure 6.

As to claim 84, see col. 43, lines 5-10.

As to claim 85, see col. 21, line 65 through col. 22, line 8.

As to claim 94, see col. 34, line 47 through col. 35, line 24, where Chen discloses a latex-free embodiment.

As to claims 133, 134, 136, and 137, Chen discloses both sides of the web may be absorbent (col. 36, lines 41-49).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 6, 8, 68, 72, 74, 86, 89, 90, 91, 101-113, 118, 119, and 135 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen USPN 5990377.

As to claims 2, 6, 68, 72, 103, and 118, Chen describes an uncreped three dimensional through dried cellulosic web of bulk enhancing fibers. Chen does not specifically describe the exact number of layers of the multi-ply structure. However, Chen discloses a multi-layer structure is desired allowing better control of physical properties by tailoring the material composition of each layer (col. 3 ,lines 55-62). It would have been obvious to one or ordinary skill in the art to use the claimed number of plies and folded stacks as a mere modification of a specific size and shape does not patentably distinguish the claimed invention from the prior art.

As to claims 8, 74, 86, 89, 90, 91, 101, 102, and 104-113, Chen discloses the present invention substantially as claimed, see the rejection of claim 1 supra. However, Chen does not disclose the claimed absorbent capacity. Chen describes the basis weight, density and materials.

Regarding the absorbent capacity and the examiner's interpretation of the test and performance characteristics of the instant apparatus claims, when the structure recited

in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions are presumed to be inherent (MPEP 2112-2112.01). A *prima facie* case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except a property or function and the examiner can not determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof as in *In re Fitzgerald*, 619 F.2d 67, 70 205 USPQ 594, 596 (CCPA 1980).

As to claim 135, Chen discloses both sides of the web may be absorbent (col. 36, lines 41-49).

(10) Response to Argument

Applicant's arguments filed 3/13/08 have been fully considered, and are not persuasive. In response to applicant's argument that Chen does not disclose or suggest that this replacement for an absorbent core can be used for a cleaning surface, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Chen teaches an absorbent web, which is capable of being used for a cleaning surface if that is desired by the user.

Applicant argues Chen does not teach multi-layer compressible substrate comprising a plurality of stacked plies. However, Chen teaches the basesheet is

formed as a multilayer structure with various plies (col. 3, lines 45-49). The structure is capable of being compressed.

Applicant argues Chen the use of an abrasive particles comprising filler particles or microspheres attached to an outer cover. Applicant argues the disclosure of a "stiffer" adhesive does not equate to the abrasive particles that facilitates scrubbing of a surface. As previously stated by the Examiner, Chen teaches the adhesive can be applied in spray, mist, droplets, or any form. The Examiner, at least, interprets the droplets, as adhesive particles as broadly as claimed. The term "filler particles" at least is very broad and can encompass any material. The adhesive particles can be considered filler particles as broadly as claimed, since no specific material or comparison is given in the claims or specification, the examiner has interpreted the term abrasive as relative to other portions of the article. In this instance, the adhesive is deemed abrasive as compared to the surrounding base sheet. The argument is primarily directed to an intended use of the abrasive particles. The surface of the web containing the adhesive is capable of being used to scrub a surface.

Applicant argues Chen does not disclose the use of meltblown shot as an abrasive surface. However, Chen teaches the adhesive application can be through meltblown application (col. 5, lines 45-51), which constitutes meltblown shot.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jacqueline F Stephens/

Primary Examiner, Art Unit 3761

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